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No. ICC-01/14-01/18

Date: 23 August 2024

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Single Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

Decision on the Yekatom Defence Request for leave to add item CAR-OTP-2115-0285 to its List of Evidence

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 64(2) and 67 of the Rome Statute (the ‘Statute’) and Rule 77 of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Yekatom Defence Request for leave to add item CAR-OTP-2115-0285 to its List of Evidence’.

I. Procedural history

1. On 17 November 2023, in accordance with the time limit set by the Chamber,¹ the Yekatom Defence (the ‘Defence’) filed its List of Evidence.²
2. On 12 July 2024, the Defence requested *inter partes* disclosure of item CAR-OTP-2115-0285 (the ‘Item’) pursuant to Rule 77 of the Rules and Article 67(2) of the Statute.³
3. On 16 July 2024, the Office of the Prosecutor (the ‘Prosecution’) disclosed the Item.⁴
4. On 6 August 2024, the Defence requested the Chamber’s leave to add the Item to its List of Evidence (the ‘Request to Add’) and to find that the Prosecution violated its disclosure obligations in relation to the Item (jointly, the ‘Request’).⁵
5. On 14 August 2014, the Prosecution opposed the Request (the ‘Response’).⁶

¹ Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence), 29 May 2023, ICC-01/14-01/18-1892, para. 21(i).

² See Yekatom Defence’s List of Witnesses and Evidence, ICC-01/14-01/18-2212-Conf (with confidential Annexes A, B, C and D).

³ Email from the Defence to the Prosecution, 12 July 2024, at 11:37, see Annex B to the Request, ICC-01/14-01/18-2617-Conf-AnxB, p. 3.

⁴ See Annex to the Prosecution’s Communication of the Disclosure of Evidence on 15 July 2024, 16 July 2024, ICC-01/14-01/18-2594-Conf-Anx.

⁵ Yekatom Defence Request for leave to amend its List of Evidence to add CAR-OTP-2115-0285, ICC-01/14-01/18-2617-Conf (with two confidential Annexes A and B).

⁶ Prosecution’s Response to “Yekatom Defence request for leave to amend its List of Evidence to add CAR-OTP-2115-0285 (ICC-01/14-01/18-2617)”, ICC-01/14-01/18-2643-Conf.

II. Analysis

6. The Single Judge recalls the applicable law for requests to add items to the participants' lists of evidence⁷ and regarding the Prosecution's disclosure obligations.⁸
7. The Single Judge notes that the Item is a notebook of a withdrawn Prosecution witness (the 'Witness'), who was a Muslim resident of Boda and present when the Seleka arrived.⁹ In this notebook, the Witness took notes of the events in Boda in 2014, including that D29-3014 called a meeting at the Catholic Church to 'sensitise' the Christian population to understand '*le sens de cette guerre et l'art de vivre ensemble*'.¹⁰ The Witness made reference to this notebook in his interview with the Prosecution between 7 to 8 August 2019.¹¹ A draft statement of this interview, which is not in evidence, was disclosed on 24 December 2021.¹²
8. The Defence submits that the Item is 'significant in light of the rest of the available evidence'. *Inter alia*, it submits that it corroborates D29-3014's evidence on promoting reconciliation in Boda and refutes the Prosecution's efforts to impugn this witness's credibility on this matter.¹³
9. Considering that this information might impact on the Chamber's assessment of D29-3014's credibility,¹⁴ as well as the fact that the Witness's draft statement refers to the Item, the Single Judge considers that the Prosecution should have disclosed the Item on 24 December 2024 as potentially material to the preparation of the Defence in the specific circumstances at hand, pursuant to Rule 77 of the

⁷ See Decision on the Prosecution Request to Add Six Email Threads to its List of Evidence, 6 May 2021, ICC-01/14-01/18-989-Conf (public redacted version notified on 30 September 2022, ICC-01/14-01/18-989-Red), paras 5-6. See also the jurisprudence referenced therein, nn. 15-20. See also Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on Defence Request to Add 14 Items to its List of Evidence, 24 July 2018, ICC-02/04-01/15-1314, para. 7.

⁸ See for example Decision on the Yekatom Defence Motion for Disclosure of Prior Statement of Witness P-0801, 15 June 2020, ICC-01/14-01/18-551-Conf (public redacted version notified the same day, ICC-01/14-01/18-551-Red), para. 25.

⁹ CAR-OTP-2118-9860, at 9862-64, paras 11, 16-28.

¹⁰ CAR-OTP-2115-0285, at 0289.

¹¹ CAR-OTP-2118-9860, at 9877, paras 100-103.

¹² Annex to the Prosecution's Communication of the Disclosure of Evidence on 24 December 2021, 24 December 2021, ICC-01/14-01/18-1231-Conf-Anx, p. 6.

¹³ Request, ICC-01/14-01/18-2617-Conf, paras 21-31.

¹⁴ See also Request, ICC-01/14-01/18-2617-Conf, para. 4, which further indicates that the Item would 'by extension' also assist the Chamber's assessment of Prosecution witness P-1962.

Rules. The Single Judge thus finds that the Prosecution violated its disclosure obligations under this provision.

10. Turning to the Request to Add, the Single Judge notes that by virtue of this belated disclosure on 16 July 2024, the Defence was not in a position to include the Item on its List of Evidence on 17 November 2023 or request its addition until now. Accordingly, the Single Judge does not find the Request to Add untimely.¹⁵ He further notes the limited nature of the Item and that the Prosecution has been aware of its content since August 2019. In light of these circumstances, and recalling the abovementioned prospective significance of the Item to the proceedings, the Single Judge sees no impediment to adding it to the Defence's List of Evidence. He therefore grants the Request to Add.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

FINDS that the Prosecution violated its disclosure obligations pursuant to Rule 77 of the Rules in relation to the Item;

GRANTS the Request to Add; and

ORDERS the Defence and the Prosecution to file public redacted versions of the Request, ICC-01/14-01/18-2617-Conf, and the Response, ICC-01/14-01/18-2643-Conf, respectively, within one week of notification of the present decision.

Done in both English and French, the English version being authoritative.



Judge Bertram Schmitt
Single Judge

Dated 23 August 2024

At The Hague, The Netherlands

¹⁵ See also Request, ICC-01/14-01/18-2617-Conf, paras 32-47.